

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Entertainment Media Trust, Dennis J. Watkins,)	File No.: EB-10-KC-0020
Trustee)	NAL/Acct. No.: 201132560003
Licensee of Station KZQZ)	FRN: 0014655476
St. Louis, MO)	Facility ID Nos.: 72391, 5281
)	
Licensee of Station KQQZ)	
DeSoto, MO)	
)	
)	

FORFEITURE ORDER

Adopted: March 7, 2013

Released: March 7, 2013

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of eight thousand five hundred dollars (\$8,500) to Entertainment Media Trust, Dennis J. Watkins, Trustee (Entertainment Media Trust or the Licensee), licensee of AM Station KZQZ, in St. Louis, Missouri and AM Station KQQZ, in DeSoto, Missouri for willful violation of Sections 73.1350 and 73.3526 of the Commission's rules (Rules) and willful and repeated violation of Section 73.1590 of the Rules.¹ The noted violations involved Entertainment Media Trust's failure to (1) operate Station KZQZ in accordance with the terms of its station authorization, (2) make available complete public inspection files for Stations KZQZ and KQQZ, and (3) conduct required annual equipment performance measurements for Station KZQZ.

II. BACKGROUND

2. On May 19, 2011, the Enforcement Bureau's Kansas City Office (Kansas City Office) issued a Notice of Apparent Liability for Forfeiture (NAL)² to Entertainment Media Trust for its operation of Station KZQZ with an incorrect directional pattern, its failure to conduct required equipment performance measurements for Station KZQZ in 2008 and 2009, and its failure to maintain and make available complete public inspection files for Stations KZQZ and KQQZ. As described in detail in the NAL,³ an agent from the Kansas City Office conducted inspections of Stations KZQZ and KQQZ on April 21, 2010. In view of the record evidence, including the fact that agents from the Enforcement Bureau found public inspection file

¹ 47 C.F.R. §§ 73.1350, 73.1590, 73.3526.

² *Entertainment Media Trust, Dennis J. Watkins, Trustee*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6877 (Enf. Bur. 2011).

³ A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

violations in two other stations owned by the Licensee on the same day as the inspection here, the *NAL* proposed a forfeiture of \$25,000 against Entertainment Media Trust for violations of Sections 73.1350, 73.1590 and 73.3526 of the Rules. Entertainment Media Trust submitted a response to the *NAL* requesting reduction of the proposed forfeiture, because it asserts it (1) operated outside of station parameters due to an equipment malfunction, (2) maintained complete public inspection files and temporarily misplaced them during the inspection, (3) has a history of compliance with the Rules, and (4) is unable to pay the forfeiture.⁴

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁵ Section 1.80 of the Rules,⁶ and the *Forfeiture Policy Statement*.⁷ In examining Entertainment Media Trust's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ As discussed below, we have considered Entertainment Media Trust's response in light of these statutory factors and reduce the forfeiture to \$8,500 based on its documented inability to pay.

A. Failure to Operate Station with Correct Directional Pattern

4. We affirm the *NAL*'s finding that Entertainment Media Trust violated Section 73.1350 of the Rules. Section 73.1350 of the Rules states that "[e]ach licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization."⁹ As reflected in the *NAL*, on April 20, 2010, an agent from the Kansas City Office observed Station KZQZ operate with a daytime directional pattern at night. Although Entertainment Media Trust does not dispute the agent's observations, it requests reduction of the proposed forfeiture because it asserts its violation was attributable to equipment failure.¹⁰ The Licensee states that its supervising engineer was out of town on April 20, 2010 when the "equipment responsible for automatically switching the signal went offline and could not be timely restored."¹¹ Entertainment Media Trust continues that the transmitter was switched manually from April 21, 2010 until the supervisory engineer was able to restore the failed equipment.¹² It also states that it has since "established procedures to monitor the automatic switching to verify it occurs as required."¹³

⁴ Letter from Anthony T. Lepore, Esq., Counsel for Entertainment Media Trust, to the Kansas City Office (June 13, 2011) (*NAL Response*) (on file in EB-10-KC-0020).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 C.F.R. § 73.1350.

¹⁰ *NAL Response* at 2.

¹¹ *Id.*

¹² See Declaration of Michael Petz, Station Engineer for Station KZQZ, attached to *NAL Response*.

¹³ *Id.*

5. Entertainment Media Trust does not dispute that, prior to April 21, 2010, it had (1) no station personnel monitoring the station's transmitter, (2) no remote control equipment installed, (3) no automated monitoring equipment to determine if the station was operating outside authorized parameters for the pertinent time of day, and (4) no established monitoring procedures or schedules for the station to ensure compliance with the Rules and the station authorization. Therefore, although its equipment may have malfunctioned,¹⁴ Entertainment Media Trust's lack of monitoring and maintenance of its equipment resulted in its failure to detect the equipment malfunction and the improper directional pattern. These omissions rendered Entertainment Media Trust's violation willful. Accordingly, we find that Entertainment Media Trust willfully violated Section 73.1350 of the Rules by operating with an incorrect directional pattern and find no grounds to reduce the proposed forfeiture.

B. Failure to Conduct Required Equipment Performance Measurements

6. Similarly, we affirm the *NAL*'s finding that Entertainment Media Trust violated Section 73.1590 of the Rules. That provision states, in relevant part, that "the licensee of each AM... station... must make equipment performance measurements for each main transmitter ... annually, ... with not more than 14 months between measurements..."¹⁵ and requires such measurements be kept on file for two years and made available upon request.¹⁶ As set forth in the *NAL*, Entertainment Media Trust could not produce the equipment performance measurements for 2008 and 2009 on April 20, 2010 and later admitted that it failed to conduct the tests in those years. In response to the *NAL*, Entertainment Media Trust states only that it "has established procedures for making required measurements relative to spurious and harmonic emissions required by § 73.1590(d)."¹⁷ Corrective action taken to come into compliance with the Rules is expected, however, and does not nullify or mitigate any prior forfeitures or violations.¹⁸ Thus, we find that Entertainment Media Trust willfully and repeatedly violated Section 73.1590 of the Rules by failing to conduct required equipment performance measurements for Station KZQZ in 2008 and 2009 and find no grounds to reduce the proposed forfeiture.

C. Failure to Make Available a Complete Public Inspection File

7. We also affirm the *NAL*'s finding that Entertainment Media Trust violated Section 73.3526 of the Rules. Section 73.3526 of the Rules states that "[e]very permittee or licensee of an AM, FM, TV or a Class A station in the commercial broadcast services shall maintain a public inspection file containing the material" set forth in that section.¹⁹ As described in the *NAL*, an agent from the Kansas City Office requested to inspect the public inspection files for Station KQQZ and Station KZQZ on April 20, 2010 and found that its public inspection files were missing issues/programs lists for two quarters (Station KQQZ) and eight quarters (Station KZQZ), respectively, as well as comments received by Station KZQZ from the public via the station's webpage. Entertainment Media Trust does not deny these facts, but asserts that the "deficiencies in the KZQZ and KQQZ public files arose from the ... attendant consolidation of business operations of all four stations [KZQZ, KQQZ, WQQZ and KQQZ] into one location [in Belleville, Illinois] resulting in the temporary mislocation of certain portions of public

¹⁴ We note that the complaint that triggered this investigation alleged that Station KQQZ had been operating 24 hours a day with full daytime power for weeks, so there is some evidence that the violation was more than an isolated occurrence.

¹⁵ 47 C.F.R. § 73.1590(a)(6).

¹⁶ 47 C.F.R. § 73.1590(d).

¹⁷ See Declaration of Michael Petz, Station Engineer for Station KZQZ, attached to *NAL Response*.

¹⁸ See *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹⁹ 47 C.F.R. § 73.3526(a)(2).

files.... Offices were temporarily relocated along with files and furnishings during the construction process and the personnel on hand on [April 21, 2010] were unable to locate the relevant documents.”²⁰

8. During the inspection of the Belleville main studio on April 21, 2010, station management mentioned the consolidation and that some public inspection file documents might be in a back room. The agent from the Kansas City Office gave station staff ample time to look through the boxes in the back room, but they were unable to locate the missing documents or any evidence that the documents had been maintained. Thus, even if Entertainment Media Trust did misplace the missing contents of its public inspection files during the consolidation, the Licensee’s actions would still constitute a violation of Section 73.3526 of the Rules. That section requires that the file be made available for public inspection upon request at the station’s main studio, which at the time of the inspection was the Belleville location.²¹ Therefore, we find that Entertainment Media Trust willfully violated Section 73.3526 of the Rules by failing to make available complete public inspection files.

D. Inability to Pay

9. Entertainment Media Trust requests reduction of the proposed forfeiture based on its inability to pay.²² With regard to an individual’s or entity’s inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.²³ Having reviewed Entertainment Media Trust’s submitted documentation, we conclude that the forfeiture should be reduced further to \$8,500, an amount within the range determined by the Bureau to not be excessive.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission’s rules, Entertainment Media Trust, Dennis J. Watkins, Trustee **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand five hundred dollars (\$8,500) for violations of Sections 73.1350, 73.1590, and 73.3526 of the Commission’s rules.²⁴

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²⁵ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for

²⁰ *NAL Response* at 1.

²¹ *See Spirit Broadcasting, Inc.*, Forfeiture Order, 26 FCC Rcd 15276 (Enf. Bur. 2011) *aff’g* Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 10212 (Enf. Bur. 2011).

²² *NAL Response* at 2. Entertainment Media Trust also argues for a reduced forfeiture because of its history of compliance and good-faith efforts to comply with the Commission’s public inspection file rules. Because we are already reducing the forfeiture based on the Licensee’s inability to pay well beyond any reduction Entertainment Media Trust would receive for the other arguments, we need not address these other claims.

²³ *See PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

²⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.1350, 73.1590, 73.3526.

²⁵ 47 C.F.R. § 1.80.

enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁶ Entertainment Media Trust, Dennis J. Watkins, Trustee shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made.

12. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

²⁶ 47 U.S.C. § 504(a).

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Entertainment Media Trust, Dennis J. Watkins, Trustee at 6500 West Main Street, Suite 315, Belleville, IL 62223 and to its counsel, Anthony T. Lepore, Esq., PO Box 823662, South Florida, FL 33082-3662.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau